

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

NEXTEER AUTOMOTIVE CORP.

and

Case No. 07-CA-215036

LOCAL 699, INTERNATIONAL UNION,  
UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA (UAW), AFL-CIO

**RESPONDENT'S EXCEPTIONS TO  
ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Nexteer Automotive Corp. ("Respondent") respectfully files the following exceptions to the December 10, 2018 Decision of Administrative Law Judge ("ALJ") Paul Bogas.

**I. EXCEPTIONS TO THE FINDINGS, RULINGS, AND CONCLUSIONS OF THE ALJ**

1. To the credibility determinations issued in the Decision that are not supported by the record, (D. 7:46-8:8, 9:2-3),<sup>1</sup> as this is contrary to the substantial evidence in the record as a whole. (Tr. 17-189).
2. To the failure to consider Joshua Nuffer-Bauer's ("Bauer") prior discipline where it establishes a pattern of conduct consistent with that alleged by Respondent in the instant case. (D. 4:43-49).
3. To the finding that Bauer did not yell profanities in the presence of other employees, (D. 7:44-45), where inconsistent with the testimony at hearing. (Tr. 81,

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<sup>1</sup> References to the ALJ's Decision are identified by the letter "D" followed by page and line number, e.g., "D. \_\_\_\_:\_\_\_\_." References to the hearing transcript will be "Tr." followed by the appropriate page number. General Counsel exhibits, Union exhibits, and Respondent exhibits will be similarly referenced "GC Ex.," "U. Ex.," or "R. Ex." followed by the exhibit number. The Complaint is referenced as "Compl." followed by the appropriate paragraph number.

110).

4. To the repeated rejection of Respondent's witnesses' testimony regarding facts not explicitly stated in contemporaneous writings. (D. 7:46-8:8).

5. To the rejection of Area Manager Benny Taylor's ("Taylor") testimony that he felt threatened because "Taylor did not himself stand up or raise his hands in a protective gesture," (D. 9:2-3), where the record establishes Taylor moved backward away from Bauer out of concern for his safety. (Tr. 80, 97, 100, 110).

6. To the finding that the first factor of *Atlantic Steel*, 245 NLRB 814 (1979), weighed in favor of protecting Bauer's conduct, (D. 11:22-23), where non-bargaining unit employees could overhear his profane outburst. (Tr. 49, 81, 110).

7. To the finding that the second factor of *Atlantic Steel* weighed "heavily in favor" of protection, (D. 12:13-14), where the ALJ noted that the subject matter of the meeting was to discuss a personal issue – "Respondent's dismissive treatment of [Bauer]." (D. 12:33).

8. To the finding that the third factor of *Atlantic Steel* weighed in favor of protection, (D. 12:38-39), where this is unsupported by the record as a whole and relevant precedent. (Tr. 17-189).

9. To the ALJ's reliance on *Plaza Auto Center*, 360 NLRB 972 (2014), *Pier Sixty*, 362 NLRB No. 59 (20150, *enfd.* 855 NLRB 115 (2nd Cir. 2017), and *Alton H. Piester, LLC*, 353 NLRB 369 (2008), (D. 13:20-26, 14:28-31), where the actions of the employees are clearly distinguishable from Bauer's actions in the instant case.

10. To the conclusion that Bauer's conduct did not lose the protections of the Act under *Atlantic Steel*, (D. 15:18-24), as this is unsupported by the record as a whole and relevant precedent. (Tr. 17-189).

11. To the conclusion that Respondent violated Sections 8(a)(1) and 8(a)(3) when it terminated Bauer, (D. 15:23-24), as this is unsupported by the record and relevant precedent. (Tr. 17-189).

## **II. CONCLUSION**

For these reasons, Respondent respectfully asks that the exceptions of Respondent Nexteer Automotive Corp. be granted.

Respectfully submitted this 7th day of January, 2019.

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

By: /s/ Kim F. Ebert  
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**Charging Party.**

**CERTIFICATE OF SERVICE**

I do hereby certify that on January 7, 2019, a true and correct copy of the foregoing was *Electronically Filed* on the NLRB's website <http://www.nlr.gov>.

Also, I do hereby certify that a true and correct copy of the foregoing has been served by electronic mail this 7th day of January, 2019 on: Stuart Shoup at [SShoup@uaw.net](mailto:SShoup@uaw.net) and Scott Preston at [preston.scott@nlrb.gov](mailto:preston.scott@nlrb.gov).

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